

**FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

REC 14  
**SENSITIVE**

Pre-MUR: 426 (MUR 5643)  
DATE SUBMITTED: September 13, 2004  
DATE ACTIVATED: October 14, 2004

EXPIRATION OF SOL: March 25, 2007

SUA SPONTE  
COMPLAINANTS:

Carter's Inc.; Frederick Rowan; Michael Casey;  
Charles Whetzel; David Brown

RESPONDENTS:

Carter's Inc.; Frederick Rowan; Michael Casey;  
Charles Whetzel; David Brown

RELEVANT STATUTES:

2 U.S.C. § 441b(a)  
2 U.S.C. § 441f  
11 C.F.R. § 103.3(b)(2)  
11 C.F.R. § 104.8(c)  
11 C.F.R. § 104.8(e)  
11 C.F.R. § 110.4(b)(1)  
11 C.F.R. § 114.2(a)  
11 C.F.R. § 114.2(e)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Department of Justice<sup>1</sup>

**I. INTRODUCTION**

Carter's Inc. and four of its senior corporate officers ("Respondents"), speaking through their attorneys, voluntarily disclosed violations of 2 U.S.C. §§ 441b and 441f of the Federal Election Campaign Act in Spring of 2002. The Respondents' submission reveals that four Carter's executives and their wives attended a March 2002 speech by President Bush given as

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<sup>1</sup> Respondents made a simultaneous submission to the Department of Justice's Public Integrity Section, which advised this Office that it does not plan to pursue prosecution of this matter

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1 part of a fundraiser to benefit the Chambliss for Senate committee, and that Carter's subsequently  
2 reimbursed the four executives for the cost of their tickets (totaling \$8,000), which in fact were  
3 eight separate \$1,000 contributions from the executives and their wives to Chambliss for Senate.  
4 The individual Respondents: Frederick Rowan, Michael Casey, Charles Whetzel, and David  
5 Brown have each repaid Carter's for the prior reimbursement of contributions made in  
6 connection with their tickets and their spouses tickets to the fundraiser.<sup>2</sup> Carter's has taken  
7 remedial action by reissuing corporate policies prohibiting the reimbursement of political  
8 contributions.

9 Respondents produced complete records and affidavits from Carter's internal  
10 investigation of this matter. Accordingly this Office recommends that the Commission find  
11 reason to believe that each of the Respondents violated 2 U.S.C. §§ 441b and 441f and  
12 immediately enter into pre-probable cause conciliation.

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 **A. FACTUAL SUMMARY**

15 Carter's, Inc. is a corporation headquartered in Atlanta, Georgia that produces children's  
16 apparel. Frederick Rowan is the Chairman and Chief Executive Officer of Carter's, Inc. Michael  
17 Casey is the Executive Vice President-Finance and Chief Financial Officer of Carter's, Inc.  
18 Charles Whetzel is the Executive Vice President-Global Sourcing for Carter's, Inc. David  
19 Brown is the Executive Vice President-Operations for Carter's, Inc.

20 In March 2002, Frederick Rowan, Chairman and CEO of Carter's, learned from his wife  
21 that President Bush was going to be in Atlanta at the end of the month to give a speech. Mr.

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<sup>2</sup> Because the submission included affidavits indicating that the four spouses were unaware of the corporate reimbursements, they have not been generated as respondents in this matter

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1 Rowan decided that the event would be a "good motivation-building opportunity for Carter's  
2 senior management." Submission at 3. Mr. Rowan then suggested to four executives at Carter's  
3 that they all attend the speech with their spouses as a group. The executives who attended  
4 included Frederick Rowan, Michael Casey, Charles Whetzel, and David Brown.<sup>3</sup>

5 Mrs. Rowan arranged for tickets to the speech with Mr. Rowan's executive assistant.  
6 Upon consultation with her friend, Bernice Rowan learned that the tickets had to be purchased  
7 with checks from the individuals attending the event made out to Chambliss for Senate.<sup>4</sup>  
8 Chambliss for Senate was the principal campaign committee of Saxby Chambliss, a candidate for  
9 a U.S. Senate seat from Georgia in 2002.

10 Mrs. Rowan obtained the checks and information for those attending through Mr.  
11 Rowan's executive assistant. Around the same time, Mr. Rowan had his assistant inform all the  
12 executives attending the event to submit the cost of the tickets to the company for  
13 reimbursement. Mr. Rowan indicates that he viewed the event as "an appropriate company  
14 expenditure" and "an excellent team-building event of the sort [he] tr[ies] to arrange for the  
15 management team from time to time." Submission at 4. Messrs. Casey, Whetzel, Brown, and  
16 Rowan submitted the cost of the tickets for them and their wives to the company for  
17 reimbursement.

18 Although the event was plainly a political fundraiser, the attendees contend they viewed it  
19 primarily as a speech by the President. Even though the checks for the tickets were made out to  
20 Chambliss for Senate and the event featured President Bush and Saxby Chambliss, Mr. Rowan

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<sup>3</sup> A fifth Carter's executive, Joseph Pacifico, attended the event, but did not submit a request for reimbursement

<sup>4</sup> Each person attending was also required to provide his/her social security number and date of birth. All parties claim to have believed that the individual checks, social security numbers, and birth dates were merely for security purposes, and they did not believe they were making a political contribution.

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1 did not regard the payments for tickets as political contributions. Submission at 5. As for the  
2 other executives, Mr. Brown apparently did recognize the dinner as a fundraising event but never  
3 mentioned that or discussed it as such with the others. It does not appear that any of the  
4 individuals had ever made a political contribution to a federal candidate prior to the contributions  
5 at issue in this matter.

6 Carter's reimbursed Messrs. Rowan, Casey, Whetzel, and Brown for their tickets to the  
7 event in the amount of \$8,000. An internal review of the company, conducted in early summer  
8 2004, "identified the reimbursements of the Bush event costs as violating federal campaign  
9 finance laws." Submission at 5. The review also determined the reimbursements violated  
10 company policy as it existed in March 2002. Messrs. Rowan, Casey, Whetzel, and Brown were  
11 instructed to repay the company for the reimbursement of the event costs. They have all made  
12 the appropriate repayments. The company also reissued its expense reimbursement policy,  
13 reiterating that it would not reimburse the costs of political contributions of employees. Carter's  
14 also instructed its counsel to disclose the violation to federal enforcement officials.

15 B. ANALYSIS

16 1. Carter's

17 Under the Act, corporations are prohibited from making contributions or expenditures  
18 from their general treasury funds in connection with any election of any candidate for federal  
19 office. 2 U.S.C. § 441b(a).

20 The Act provides that no person shall make a contribution in the name of another person  
21 or knowingly permit his or her name to be used to effect such a contribution, and that no person  
22 shall knowingly accept a contribution made by one person in the name of another person. 2

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1 U.S.C. § 441f. Commission regulations also prohibit persons from knowingly assisting in  
2 making contributions in the name of another. *See* 11 C.F.R. § 110.4(b)(1)(iii).

3 Carter's admits to reimbursing the four executives for the cost of the tickets to the speech  
4 by President Bush, which were political contributions to attend a fundraiser for Chambliss for  
5 Senate.<sup>5</sup>

6 Although 441f violations are usually knowing and willful, the available information  
7 indicates that Respondents were unaware that their conduct was illegal. Respondents also  
8 revealed the violation of the law to federal authorities as soon as it was discovered and have  
9 taken steps to remedy the violation. Therefore, this Office recommends that the Commission  
10 find reason to believe Carter's violated 2 U.S.C. §§ 441b and 441f.

11 2. Messrs. Rowan, Casey, Whetzel, and Brown

12 Section 441b(a) prohibits any officer or director of any corporation from consenting to  
13 any contribution or expenditure by the corporation. It appears Mr. Rowan was the individual  
14 who suggested obtaining reimbursement for the fundraiser tickets from the company, and each  
15 other officer consented in submitting the costs of their tickets to the company for reimbursement.  
16 Furthermore, each person knowingly permitted his and his wife's name to be used to effect the  
17 contributions. Each of the four officer's wives also attended the fundraiser thereby making a  
18 contribution. Each couple wrote a check for \$2,000 on their joint checking account for the pair  
19 of tickets, and the officers were reimbursed by Carter's. When the violations were discovered,  
20 each officer repaid Carter's for the full \$2,000 reimbursement through checks written on a joint  
21 checking account with his spouse. This Office recommends, therefore, that the Commission find

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<sup>5</sup> "The entire amount paid to attend a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution" 11 C F R § 100.53

1 reason to believe that Messrs. Rowan, Casey, Whetzel, and Brown violated Sections 441b and  
2 441f of the Act.

3 3. Chambliss for Senate Committee

4 Section 441b(a) makes it unlawful for any candidate, political committee, or other person  
5 knowingly to accept or receive a contribution prohibited by section 441b(a). Chambliss for  
6 Senate, the recipient committee, has not been notified in this matter or generated as a respondent.  
7 At this time, there is no evidence that it had any knowledge that the contributions it received  
8 from the Respondents were reimbursed. Accordingly, this Office makes no recommendation at  
9 this point regarding the recipient committee.

10 **III. PROPOSED CONCILIATION AND CIVIL PENALTY**

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**IV. RECOMMENDATIONS**

1. Open a MUR;
2. Find reason to believe that Carter's Inc. violated 2 U.S.C. §§ 441b and 441f by making a corporate contribution and a contribution in the name of another and enter into pre-probable cause conciliation;
3. Find reason to believe that Frederick Rowan violated 2 U.S.C. §§ 441b and 441f by consenting to a corporate contribution and allowing his name to be used by another to make a contribution and enter into pre-probable cause conciliation;
4. Find reason to believe that Michael Casey violated 2 U.S.C. §§ 441b and 441f by consenting to a corporate contribution and allowing his name to be used by another to make a contribution and enter into pre-probable cause conciliation;
5. Find reason to believe that Charles Whetzel violated 2 U.S.C. §§ 441b and 441f by consenting to a corporate contribution and allowing his name to be used by another to make a contribution and enter into pre-probable cause conciliation;
6. Find reason to believe that David Brown violated 2 U.S.C. §§ 441b and 441f by consenting to a corporate contribution and allowing his name to be used by another to make a contribution and enter into pre-probable cause conciliation;
7. Approve the attached Factual and Legal Analyses;
8. Approve the attached Conciliation Agreement; and
9. Approve the appropriate letters.

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<sup>6</sup> The treasurer of a political committee is responsible for examining all contributions received by the political committee for evidence of legality 11 C.F.R. § 103 3(b) Contributions that present genuine questions as to whether they were made by legal sources may be deposited into a campaign depository or returned to the contributor If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution 11 C.F.R § 103 3(b)(1) If the treasurer determines that at the time a contribution was received and deposited, it did not appear to be made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality was discovered 11 C.F.R § 103 3(b)(2) The Commission has determined that the recipient Committee also may fulfill this obligation by disgorging such contributions to the U S Treasury A O 1996-5

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Lawrence H. Norton  
General Counsel

Rhonda J. Vosdingh  
Associate General Counsel  
for Enforcement

1/14/05

Date

BY:

  
Mark Shonkwiler  
Assistant General Counsel

  
Audra L. Wassom  
Attorney

Attachments:

1. Proposed Conciliation Agreement
2. Factual and Legal Analysis